

REMARKS

In response to the Office Action mailed April 19, 2005, Applicant respectfully requests reconsideration. To further the prosecution of this Application, Applicant submits the following remarks. The claims as now presented are believed to be in allowable condition.

Claims 1-30 are pending in this Application. Claims 1, 3, 5, 6, 8 and 10 have been amended. Claims 31 and 32 have been added. Claims 1, 3, 5, 6, 7, 9, 11, 12, 13, 21, 29 and 30 are independent claims.

Rejections under §112

The Examiner rejected claims 8 and 10 under 35 U.S.C. §112, second paragraph, as being indefinite. Claims 8 and 10 have been amended to change the term "preset first cost level" to "first preset cost level" such that the term is consistent with other terms in the claim. Accordingly, the rejection of claims 8 and 10 is believed to have been overcome.

Rejections under §102

Claims 1-6, 13-16, 19, 21-24, 27, and 29-30 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,070,052 to Ogasawara et al. (hereinafter Ogasawara). Ogasawara discloses a decision-theoretic satellite communications system. Ogasawara discloses, at column 2, lines 15-126 that the system includes a control unit which allocates communication system resources. At column 2, lines 37-39 Ogasawara discloses that the communication resources that are allocated are time slots, frequency channels or a combination of time slots and frequency channels. Ogasawara further discloses, at column 2 lines 40-49 that the network supply information (i.e., network resource availability) can include network connectivity, call delay times, satellite link reliability, ground node reliability, battery capacity of individual

satellites and relative location of satellites. Ogasawara does not disclose or suggest the use of a cost based criteria for selecting a resource.

In contrast to Ogasawara, claim 1 has been amended to include that the estimated response usage includes a **cost estimate for processing the request**. Support for this can be found in the specification as filed at page 5, line 21 through page 6, line 3. With respect to the rejection of claim 7, the Examiner stated that Ogasawara fails to teach comparing and selecting the resource with the lowest cost increment. The Examiner then stated that "Official Notice" is taken that the concept and advantages of providing the comparing and selecting of a resource with the lowest cost increment is well known and expected in the art. Applicants respectfully disagree with the Examiner's statement. As stated in the specification as filed, at page 2, lines 9-24:

The router can make the selection using various other approaches as well. In one conventional approach, the router can receive information on the reported load of each server, and thus direct the request to the server that has the lowest reported load among those available to handle the request. In another conventional approach, the router makes estimates of the network proximity of the client to each available server (e.g., by estimating the number of hops or intermediate connections between the client and each server). In this approach, the router directs the request to a server that is in some network sense "closest" to the client (e.g., has the fewest estimated hops between client and server).

In a further conventional approach, the router makes a determination of the type of request that the client is making (e.g., for video data) and selects a server based on the type of request. In other words, several servers are available to the client, but different servers specialize in providing different types of data (e.g., video, audio, or text data). In another conventional approach, a router can combine several factors, such as workload balancing, network proximity, and request type when selecting a server to respond to the request.

Applicants therefore suggest that the steps of generating a cost estimate for processing a request in a data communications device for directing a request to process data is not well known in the art. If the Examiner is to maintain this

rejection, the Examiner is respectfully requested to provide a reference showing this. For the reasons stated above, amended claim 1 is believed allowable over Ogasawara. Claims 3, 5 and 6 have been amended in a similar manner and are also believed allowable over Ogasawara for the same reasons.

The Examiner rejected claim 13 for the same reasons as claim 1. Claim 13 recites **generating an economic metric** for each resource and further recites choosing the data communication device based on a comparison of the **economic metric**. As discussed above, Ogasawara fails to disclose or suggest the use of an economic metric (e.g., a cost) to determine a data communication device. For the reasons stated above, claim 13 is believed allowable over Ogasawara.

Claims 21, 29 and 30 include similar language regarding an economic metric, and are also believed allowable over Ogasawara for the same reasons. Claims 2, 4, 14, 15, 19, 22-24 and 27 depend from one of claim 1, 13, or 21 and are believed allowable as they depend from a base claim which is believed allowable. Accordingly, the rejection of claims 1-6, 13-16, 19, 21-24, 27, and 29-30 under 35 U.S.C. §102(b) as being anticipated by Ogasawara is believed to have been overcome.

Rejections under §103

Claims 7-12, 17-18, 20, 25-26, and 28 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ogasawara. Claim 7, as discussed above, discloses the use of a **cost increase** in selecting a resource to process a request from a client. Ogasawara fails to disclose or suggest the use of a cost increase in selecting a resource to process a request. Applicants further suggest that the step of using a cost increase for processing a request in a data communications device for directing a request to process data is not well known in the art. If the Examiner is to maintain this rejection, the Examiner is respectfully requested to provide a reference showing this. Accordingly, claim 7 is believed patentable over Ogasawara. Claims 9, 11 and 12 include similar language as claim 7 and are

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believed allowable for the same reasons. Claims 8, 10, 17, 18, 20, 25 and 26 depend from claims 7, 9, 13 or 21 and are believed allowable as they depend from a base claim which is believed allowable. Accordingly, the rejection of claims 7-12, 17-18, 20, 25-26, and 28 under 35 U.S.C. §103(a) as being unpatentable over Ogasawara is believed to have been overcome. Applications assert that no new matter has been added by the amending of these claims, and therefore that a new search is not required.

Newly added claims

Claims 31 and 32 have been added. Applications assert that no new matter has been added by the addition of these claims, and therefore that a new search is not required.

Conclusion

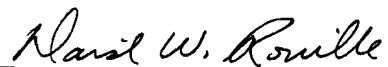
In view of the foregoing remarks, the Examiner's rejections are believed to have been overcome, placing claims 1-32 in condition for allowance and reconsideration and allowance thereof is respectfully requested. If the Examiner believes, after this Response, that the Application is not in condition for allowance, the Examiner is respectfully requested to call the Applicant's Representative at the number below.

Applicant hereby petitions for any extension of time which is required to maintain the pendency of this case. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 50-0901.

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If the enclosed papers or fees are considered incomplete, the Patent Office is respectfully requested to contact the undersigned collect at (508) 366-9600, in Westborough, Massachusetts.

Respectfully submitted,



David W. Rouille, Esq.
Attorney for Applicant(s)
Registration No.: 40,150
CHAPIN & HUANG, L.L.C.
Westborough Office Park
1700 West Park Drive
Westborough, Massachusetts 01581
Telephone: (508) 366-9600
Facsimile: (508) 616-9805

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